In the High Court of Uttaranchal, at Nainital.

Criminal Misc. Application No. 174/ 2001
(Old No. 2248/1998)

M.R. Semwal S/o Panchram Semwal
R/o 11/1, Chakrata Road, Near
Mahant Quarters, Dehradun ... Petitioner

Vs.

1- State of U.P.
2- J.N. Tiwari,
Tiwari Nursing Home,
3- Chakrata Road, Dehradun ..Respondents.

Sri Ramji Srivastava, learned counsel for the petitioner.
Sri L.K. Tiwari, learned counsel for the respondent No.2.

AND

Criminal Misc. Application No. 175/2001
(Old No. 1035/1997)

Smt. Kamla Tewari
W/o Dr. J.N. Tiwari,
R/o 3, Chakrata Road, P.S. Cantt,
District Dehradun ... Petitioner

Vs.

1- State of U.P.

2- M.R. Semwal,

S/o Pandit Panch Ram Semwal,
R/o 11/1, Chakrata Road,
P.S. Cantt, District Dehradun.....Respondents.

Sri L.K. Tiwari, learned counsel for the petitioner.
Sri Ramji Srivastava, learned counsel for the respondent No.2.

Hon'ble B.C. Kandpal, J.

By way of petition No. 174/2001 the petitioner has sought the relief for quashing the proceedings of S.T. No. 8/1997, State Versus M.R. Semwal, U/Ss 147, 504/149 and 506/149 I.P.C., pending in the court of II Addl. Sessions Judge, Dehradun.

2- By way of petition No. 175/2001, the petitioner has sought the relief for quashing the proceedings of the

Special S.T. No. 9/1996, State Versus Dr. J.N. Tiwari and others, U/S 427 I.P.C and Section 3(5) of S.C. and S.T. Act, pending in the Court II Additional Sessions Judge, Dehradun.

3- The Controversy in both the aforesaid cases is same, therefore, these cases are decided by one judgment.

4- The facts giving rise to the petition No. 174/2001 are that Dr. J.N. Tiwari lodged a first information report in respect of the incident dated 8-7-1995 at about 5 P.M., against M.R. Semwal and others U/Ss 147, 504, 506 I.P.C. The charge sheet in that case was submitted before the court U/Ss 147, 504, 506 I.P.C. against M.R. Semwal and others. The charges were also framed by the court concerned vide order dated 9-3-98, U/Ss 147, 504/149 and 506/149 I.P.C.. The report lodged by Dr. J.N. Tiwari was registered as case crime No. “32-A/1995”.

5- The facts giving rise to the petition No. 175/2001 are that M.R. Semwal lodged a first information report in respect of the incident dated 8-7-1995 at about 8 P.M., against Dr. J.N. Tiwari and other U/S 427 I.P.C. and Section 3(5) S.C. and S.T. Act. The charge sheet in that case was submitted before the court U/S 427 I.P.C. and Section 3(5) S.C. and S.T. Act against Dr. J.N. Tiwari and others. The charges for the aforesaid offences were also framed by the court concerned vide order dated 3-4-1996. The report lodged by M.R. Semwal was registered as case crime No. “32/1995”.

6- In both the cases the date of the occurrence is 8-7-1995 and the reports in both the cases were lodged at

Police Station on 9-7-1995. Thus these petitioners have been filed by the accused persons in both the cases for quashing the criminal proceedings pending against them in the courts concerned.

7- Heard learned counsel for the petitioners, learned A.G.A. and perused the record.

8- From the perusal of the first information reports the main crux of the matter comes out that the essential ingredients of the offences alleged in the first information reports are not made out. The dispute between the parties appears to be of civil nature and both the parties have lodged the first information reports against each other as a result of counter blast. It reveals from the cross-version of both the parties, made in their first information reports, that there is a civil litigation pending before the court of competent jurisdiction and the matter by the court concerned has to be finally adjudicated. Annexure-6 in the petition No. 174/2001, shows that the suit No. 842/1993 M.R. Semwal Versus Dev Ras was decreed by the Court of Civil Judge, Dehradun vide order dated 8-2-1995 and the court declared M.R. Semwal the owner of the property in question. However the report lodged by J.N. Tiwari against M.R. Semwal shows that the matter relating to property in question is still pending in the court of City Magistrate.

9- Before examining the respective contentions on merit I think it appropriate to scrutinize the legal position in this regard. While exercising the inherent powers under Section 482 Cr.P.C., the High Court has to look at the object and purpose for which the power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order

under Cr.P.C. or to prevent abuse of process of any court otherwise to secure the ends of justice. In appropriate cases to prevent judicial process for being an instrument of oppression or harassment in the hands of frustrated or vindictive litigation. Exercise of inherent power is not only desirable but necessary also so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 Cr.P.C to quash the very issue of process the High Court on the facts and circumstances of the case should exercise the power with circumspection as stated to really serve the purpose and object for which they are conferred. The inherent power can be exercised when the allegations made in the complaint, even if they are taken at their face value and accepted in its entirety do not, prima facie constitute any offence or make out a case and the complaint does not disclose any offence where uncontroversial allegations made in the complaint and in sworn statements do not disclose the commission of the offence the inherent power can be exercised. The court can invoke the jurisdiction u/s 482 Cr.P.C. where the allegations in the complaint are so absolute and inherently improbable on the basis of which no prudent person can reach to a just conclusion that there are sufficient grounds for proceeding against the accused and the complaint and the sworn statements and the other attending circumstances reveal that the complaint has been filed with mala fide intention or with ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge. Under Section 482 Cr.P.C. the High Court has very wide power and the very plentitude of power require great caution in its exercise the High Court must be careful with its decision in exercise of this power is

based on sound principles and the High Court should not exercise this power to quash the legitimate prosecution.

10- For determining the question in controversy it is to be seen on the basis of the material available on record as to whether the offence alleged in the first information report ledged by both the parties in their cross-versions in prima facie made out or not and I have already observed that both the reports lodged by the parties against each other are nothing but the counterblast. When the matter is pending before the court of competent jurisdiction then there was no occasion for the parties concerned to file the criminal complaints against each other. The allegation made in the reports by the parties against each other are absolutely malicious and vexatious.

11- The Hon'ble Supreme Court in the case **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997 (8) S.C. page 705** has held as under:-

> "*Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary*

evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complaint and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence prima facie committed by all or any of the accused."

12- Perusal of the record reveals that the civil litigation between the parties is pending and the criminal reports against each other is a counerblast of the litigation which is pending before the civil court of competent jurisdiction, hence the above facts and circumstances lead to take the inference that the complaints against each other are alluded with *mala fides* and had been initiated with ulterior motive for wreaking vengeance. Therefore, the continuance of the proceedings by way of prosecution in these cases would amount to abuse of process of court.

13- In view of the above discussion, I think that it is a fit case where the inherent power U/S 482 Cr.P.C. can be exercised and the prosecution of the parties in both the petitions can be quashed.

14- Accordingly both the petitions are allowed and the proceedings of Sessions Trial No. 8/1987, State Versus M.R. Semwal, U/Ss 147, 504/149 and 504/149 I.P.C., and the proceedings in Special S.T. No. 9/1996, State Versus Dr. J.N. Tiwari and others, U/S 427 I.P.C. and Section 3(5) of S.C. and S.TAct, both pending in the court of II Addl. Sessions Judge, Dehradun, are hereby quashed.

(B.C. Kandpal, J.)

Dated: September 04,2006.
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